

1 UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF DELAWARE

3
4 ORACLE AMERICA INC., : CA NO. 12-621-RGA

5 : March 26, 2013

6 Plaintiff :

7 :

8 : 4:00 o'clock p.m.

9 v. :

10 :

11 GEOTAG INC., :

12 :

13 Defendant. :

14:

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17 TRANSCRIPT OF MOTION HEARING

18 BEFORE THE HONORABLE RICHARD G. ANDREWS

19 UNITED STATES DISTRICT JUDGE

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22 APPEARANCES:

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24 For Plaintiff: MORRIS, NICHOLS, ARSHT & TUNNELL

25 BY: THOMAS C. GRIMM, ESQ

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-and-

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NIXON PEABODY LLP

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BY: JASON C. KRAVITZ, ESQ

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For Defendant:

MORRIS JAMES LLP

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BY: KENNETH L. DORSNEY, ESQ

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-and-

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DIRECTION IP LAW

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BY: DAVID R. BENNETT, ESQ

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Also Present:

PETER O'ROURKE, ESQ

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In-House Counsel for Oracle

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Court Reporter:

LEONARD A. DIBBS

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Official Court Reporter

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P R O C E E D I N G S

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THE COURT: Good afternoon. Please be seated.

5

This is Oracle vs. GeoTag, which used to be Taleo vs.

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GeoTag. It's Case Number 12-621.

7

Mr. Grimm, you represent the plaintiff here.

8

Mr. Dorsney, you represent the defendant.

9

And I guess it is the defendant's motion. I will hear

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from them first.

11

THE COURT: Introduce your people.

12

MR. GRIMM: I will.

13

I do represent Oracle America. Your Honor will recall

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we were here a year ago on a Motion to Intervene, which your

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Honor denied, but we indicated at that time that we would be

16

filing this motion.

17

THE COURT: You certainly did.

18

MR. GRIMM: Okay. So with me today is my co-counsel

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from Nixon Peabody, Jason Kravitz. And Mr. Kravitz will make

20

the argument today.

21

And also with me is in-house counsel from Oracle

22

America, Peter O'Rourke.

23

THE COURT: Thank you, Mr. Grimm.

24

Nice to see you, Mr. Kravitz and Mr. O'Rourke.

25

Mr. Dorsney, nice to see you, too.

1 MR. DORSNEY: You, too, your Honor.

2 Good afternoon, your Honor.

3 For GeoTag, Ken Dorsney from Morris James. With me is
4 my co-counsel, David Bennett from Direction IP Law.

5 THE COURT: Have I seen you somewhere before?

6 MR. BENNETT: Yes.

7 THE COURT: You look kind of familiar.

8 All right. I guess this is GeoTag's motion.

9 Let's be quick.

10 MR. BENNETT: If I may just give you a brief
11 background, because this case is related to the Texas GeoTag
12 action?

13 THE COURT: I think I actually have the background
14 pretty good.

15 MR. BENNETT: Okay. Just in the past two months what
16 has happened --

17 THE COURT: So in the past two months, I have no idea,
18 so I'm happy to -- just the historical background I got.

19 MR. BENNETT: Correct. Correct.

20 I just want to bring you up to date with the past two
21 months.

22 This action is based on GeoTag's action filed in Texas.

23 In the past couple months, the Markman ruling came down
24 in Texas regarding the claim construction.

25 THE COURT: Actually, I saw that in one of the other

1 GeoTag cases.

2 MR. BENNETT: The Court ordered mediation in Texas for
3 roughly 230 defendants where GeoTag is currently involved in
4 Court-ordered mediation. Today they're currently meeting with
5 seven. That will be completed by April 30th.

6 THE COURT: Okay.

7 MR. BENNETT: During that time, Oracle also asked to be
8 mediated in Texas with a mediator, because they're -- they told
9 the mediator that they fully indemnified a number of defendants.
10 I don't remember the exact number -- 12, 16 defendants -- and
11 that they are also handling the cost of defense. So they
12 requested that a mediator hold mediations with GeoTag in Texas.
13 We did mediate down in Texas last Monday, eight days ago.

14 THE COURT: When you say you did mediate, you mean
15 GeoTag and Oracle?

16 MR. BENNETT: GeoTag and Oracle in a separate mediation
17 with a separate mediator.

18 THE COURT: Okay.

19 MR. BENNETT: So that --

20 THE COURT: I guess you're still here.

21 MR. BENNETT: Well, yes, we are still here.

22 And then the cases in Texas are set to go to trial
23 December 2nd of this year.

24 THE COURT: Okay.

25 I can't remember. I think I got one that was supposed

1 to be in November, right?

2 MR. BENNETT: The Court -- the case was transferred to
3 a new Judge in January and we have a reset of the scheduling.

4 THE COURT: Yes. No, no, no. I just... okay.

5 Well, in any event, that tells me what's going on.

6 All right.

7 MR. BENNETT: In November, we have a case management
8 conference, with the Court for the December 2nd trial.

9 But GeoTag has also filed a case against Oracle
10 involving the job locator functionality down in Texas back in
11 January of this year and Oracle filed a Motion to Dismiss last
12 week in view of this case currently pending in Delaware.

13 THE COURT: So just in keeping -- I've lost track now.
14 You said GeoTag sued Oracle in 2013 or 2012?

15 MR. BENNETT: 2013.

16 THE COURT: Okay.

17 MR. BENNETT: So it would be after the --

18 THE COURT: Okay. So when we're talking about the
19 first filed and second filed cases, this is the first filed?

20 MR. BENNETT: Well, this would be the -- this would be
21 the first filed case.

22 THE COURT: All right.

23 MR. BENNETT: But from GeoTag's perspective, the first
24 filed cases would actually be the ones against their customers,
25 which were seven or more months before what happened, with

1 Oracle's filing of this case here in Delaware.

2 THE COURT: The way the trial date is set in Texas,
3 because I recall there were, you know, somewhere between 12 and
4 20 defendants per case.

5 Is December 2nd a date for Oracle to go to trial, or is
6 it a date for some unknown subset of defendants, or what --
7 whose trial date is that?

8 MR. BENNETT: It's definitely GeoTag's trial date. At
9 this time, the Court has not shown his cards as to who will be
10 going first for the defendants, and it appears likely that the
11 earliest we'll find that out is probably late November or
12 potentially December 2nd.

13 THE COURT: This is Judge Gilstrap?

14 MR. BENNETT: This is Judge Gilstrap, your Honor.

15 THE COURT: Okay.

16 MR. BENNETT: So in this case GeoTag believes that
17 there's no personal jurisdiction over GeoTag in the case that
18 was filed, because at the time the case was filed, GeoTag is a
19 Texas entity. It has no -- nothing here in Texas. It has no
20 offices. It does no business here in Delaware. Everything is
21 down in Texas, the inventors. One of the inventors is a lead
22 inventor.

23 THE COURT: No, I mean I take it that the plaintiff's
24 argument here is essentially along the lines of, GeoTag wasn't a
25 Delaware corporation, but sued all our customers.

1 So, now that it's a Texas corporation, it takes its
2 Delaware liability, so to speak, with it. And one of those
3 Delaware liabilities -- and because it was a Delaware
4 corporation, there's jurisdiction here.

5 I may not be doing justice to their argument, but
6 that's the essence of it.

7 MR. BENNETT: That is the essence of their argument.

8 But, in this case, if you look at where the actions are
9 that are requiring -- that they're stating on the basis for the
10 Declaratory Judgment action --

11 THE COURT: They're all down in Texas.

12 MR. BENNETT: They're all down in Texas.

13 THE COURT: My impression -- and I'm going to let them
14 speak for themselves in a second -- but I expect they'll concede
15 that if GeoTag had not been a Delaware corporation, you know, up
16 until November 2011, or whenever it was they switched over, that
17 there would be absolutely no basis for jurisdiction here.

18 My impression is that it turns a hundred percent on
19 GeoTag, having once been a Delaware corporation. That's the
20 only ground.

21 MR. BENNETT: That's our understanding also, your
22 Honor.

23 THE COURT: So one of things that interests me -- and I
24 didn't really see it in the briefing, but it's possible that I
25 missed it -- what strikes me as unusual here is the Declaratory

1 Judgment posture of the -- of the lawsuit that's been brought,
2 which in some ways is a forward-looking kind of lawsuit.

3 They're -- they're threatening to sue us, or that there is a
4 substantial dispute, and we want to get into the Court and get
5 it resolved. And it could be that their actions in the past
6 have contributed to that, you know, fear of being sued. I
7 suppose being sued in January in Texas might have contributed --
8 may have meant it wasn't totally specious.

9 But what I was wondering was whether -- I didn't see a
10 case cited by the other side that seemed to be sort of what I
11 took to be a Declaratory Judgment action that said we get
12 jurisdiction over defendant, because they used to be -- because
13 their prior corporate existence, there was jurisdiction, there
14 would have been personal jurisdiction.

15 MR. BENNETT: Yes, I'm not aware of any case that would
16 say that where you previously existed would be the basis of a
17 personal jurisdiction, unless, of course, there was some action
18 within that jurisdiction that led up to that.

19 THE COURT: And, you know, that's what's kind of
20 unusual about that, because normally, you know, I think there's
21 a doctrine about buying the corporation's rights and
22 liabilities.

23 GeoTag was making a dangerous product that was injuring
24 people in Delaware. It's pretty obviously, you know, you
25 couldn't become a Texas corporation and say, Oh, we can't do it

1 in Delaware, or, you know, even if -- you know, it makes a lot
2 more sense, but here it's a lot harder to figure out what the
3 right to liability was that existed before you became a Texas
4 corporation.

5 They didn't sue you until eight months after you became
6 a Texas corporation, right?

7 MR. BENNETT: Seven months.

8 THE COURT: Seven months.

9 MR. BENNETT: Correct.

10 In this case, what we believe is that the cases that we
11 cite state that the causes of action related to GeoTag bringing
12 lawsuits in the Eastern District of Texas, so that's really
13 where the activity's occurring.

14 The only thing they rely on for Delaware is the fact
15 that GeoTag filed the Articles of Incorporation here in
16 Delaware. They're saying that that's really the action or
17 activity.

18 If you look at the case law, it talks about where is
19 the action in patent infringement. It's where the offense or
20 the accusations of infringement are going, which is down in the
21 Eastern District of Texas.

22 There's no activity here in Delaware that Oracle is
23 accusing GeoTag of doing. GeoTag did not initiate any lawsuits
24 here in Delaware. It did respond in the co-pending Microsoft
25 and Google cases with a Counterclaim. But, again, that's not

1 initiating action. That is a response. In fact, a necessary
2 Counterclaim is something that GeoTag wanted to bring.

3 So with respect to the case law, if you are looking at
4 where the action is that occurred, that is resulting in Oracle's
5 Declaratory Judgment action, it's all down in the Eastern
6 District of Texas.

7 They're making some argument about, Well, GeoTag
8 existed in Delaware, but there was no activity that was ever
9 occurring in Delaware. This is not the situation that you
10 described where GeoTag was a company is selling defective
11 products, or is actively doing something here in Delaware. All
12 the actions were down in Texas.

13 So I would agree with you that GeoTag has not found any
14 cases which said that a mere corporate existence would forever
15 grant jurisdiction for any future activity.

16 THE COURT: I don't think it goes quite that far even.

17 I think what they may say is, Well, it's a combination
18 of the corporate existence combined with the things you were
19 doing while the corporation existed. They may not be things
20 quite like making a product to injure somebody, but you were a
21 Delaware corporation suing 400-odd companies in Texas, as it
22 happens, but it could have been anywhere.

23 And, so, it seems to me that the crux of their argument
24 is even though the activities you were doing weren't in
25 Delaware, you know, you were a Delaware corporation to do these

1 activities to cause them the fear of being sued.

2 I don't know exactly what the allegation is. And
3 certainly caused many of their indemnities to be -- caused them
4 some actual, I guess, harm.

5 MR. BENNETT: Well, in terms of the timing, Oracle
6 wasn't even aware, or at least based on their brief, they
7 weren't asking for any indemnifications until October 11th,
8 which was the day after the GeoTag Delaware entity ceased to
9 exist.

10 I guess at some point maybe they could have tried, or
11 maybe earlier have sued, tried to sue the GeoTag Delaware
12 entity. But in this case, all the activities are going on in
13 Texas, and I think the Federal Circuit law states that when
14 you're looking at the activities of the patentee, where the
15 action is occurring is where you are actually enforcing or
16 defending the patent. In this case, it's Texas.

17 In terms of just merely being a corporate entity at one
18 time in Delaware, we haven't found any case law that would
19 support a finding of personal jurisdiction in Delaware, after
20 the corporate entity didn't exist any more for an action that
21 has nothing to do with anything going on in Delaware.

22 THE COURT: All right.

23 Let me hear from the plaintiffs.

24 MR. KRAVITZ: Thank you, your Honor.

25 THE COURT: Good afternoon. Mr. Kravitz.

1 Have I seen you before? You were here at the other
2 intervention.

3 MR. KRAVITZ: I did, your Honor.

4 THE COURT: I have to see people multiple times. I
5 don't actually know why I remember Mr. Bennett. He must have
6 said something outrageous the previous time.

7 MR. KRAVITZ: I'm sure that it was, your Honor.

8 Your Honor, so, in this case, GeoTag wants to have its
9 Delaware cake and it wants to eat it in Texas.

10 THE COURT: Well, it seems like they stopped wanting
11 Delaware cake a while ago.

12 MR. KRAVITZ: They did. And they stopped wanting
13 Delaware cake for the admitted purpose of avoiding
14 accountability in this court and other courts in Delaware.

15 And what is interesting is that I feel like our
16 arguments are -- are two ships passing in the night here.

17 GeoTag wants to make this about a traditional
18 Declaratory Judgment action.

19 THE COURT: Okay.

20 MR. KRAVITZ: This is --

21 THE COURT: This is not what this is?

22 MR. KRAVITZ: I think this is a very unique -- your
23 Honor, your comment earlier about there are not being -- not
24 seeing any cases in the briefing, and Mr. Bennett's comment
25 about him not being aware of any.

1 I'm also not an aware of any cases that deal squarely
2 with what we've got here.

3 The reason is, I think this is a pretty unusual set of
4 circumstances. But there's case law that is pretty close and
5 extraordinarily helpful to the analysis, and it's case law that
6 interestingly doesn't even appear in the reply brief in this
7 case.

8 THE COURT: Tell me what's the best case that you cited
9 in your brief.

10 MR. KRAVITZ: I think it's the Goffe case, your Honor,
11 which is from the District of Delaware. It cites and relies on
12 the Duris case from the Sixth Circuit.

13 And the essence of the Goffe case, your Honor, is that
14 for the purpose of personal jurisdiction analysis, the actions
15 of the constituent company -- so that is sort of the old company
16 -- the old co --

17 THE COURT: Right.

18 MR. KRAVITZ: -- the actions of the constituent company
19 are going to flow through to the new company for purposes of the
20 personal jurisdiction analysis. So anything that --

21 THE COURT: I take it that Goffe -- and maybe this is
22 the reason why you're not citing it more heavily -- it wasn't a
23 Declaratory Judgment, right?

24 MR. KRAVITZ: I don't believe it's a Declaratory
25 Judgment action, your Honor.

1 The Duris case that it relies on -- I believe the Goffe
2 case, your Honor, has to do with, I believe it's fraud.

3 I can pull out my copy of the case, your Honor, if you
4 to talk some more about the Goffe.

5 But the Duris case is more of a traditional injury
6 case. It has to do with stevedores and someone -- someone who
7 was injured on the job -- and his effort to hold his employer
8 accountable when the employer had done something similar to
9 what's been -- what's happened here is it moved outside -- or
10 from Ohio and reincorporated in a different state. So that's
11 the Duris case, your Honor.

12 So what the Court's in Goffe and Duris held was that,
13 again, for purposes of personal jurisdiction, you can't avoid
14 accountability by simply changing the state of incorporation.
15 You're going to be held accountable in that state, and here it
16 would be Delaware, for the conduct -- the activities that you
17 undertook while you were incorporated here.

18 THE COURT: But you're not actually trying to hold them
19 accountable for activities they undertook while they were here.

20 You're saying, I think -- tell me if I'm wrong -- you
21 know, they're causing us a problem by, in effect, asserting the
22 word violating their patents, without actually suing us, and so
23 we want a Declaratory Judgment to end this uncertainty, right?

24 MR. KRAVITZ: I think that's a fair summary, your
25 Honor, but I don't want to minimize the Declaratory Judgment

1 Act. It's a viable cause of action. Congress decided, you
2 know, when it enacted Section 2201 that it was -- there's now a
3 -- a right for a company to take the initiative when that
4 company feels threatened, instead of living under the threat of
5 litigation --

6 THE COURT: At the time that you took the initiative,
7 you certainly did not feel threatened by GeoTag Delaware,
8 because they didn't exist any more.

9 MR. KRAVITZ: We did not feel threatened by GeoTag at
10 the time we filed the Declaratory Judgment action. That's
11 correct, your Honor.

12 But that's not what we're arguing. We're arguing that
13 the law allows, for purposes of personal jurisdiction, to tie
14 that back to GeoTag Delaware, because that is the company that
15 was formed, incorporated in Delaware for one purpose, and one
16 purpose only, it was to sue and enforce the '471 patent.

17 THE COURT: It was incorporated to be a litigation
18 machine.

19 MR. KRAVITZ: To be a litigation machine, your Honor.

20 And to be blunt about it, GeoTag Delaware was in the
21 business of making not widgets, but making lawsuits, okay? And
22 it chose to locate its factory in Texas, okay?

23 So this really is analogous to a situation I think that
24 you alluded to earlier, your Honor. In a situation where if
25 they were a Delaware company, a Delaware company that was

1 incorporated here for the purposes of making widgets, and it
2 wanted to manufacture those widgets in Texas at a factory, and
3 that widget -- one of those widgets went on to hurt somebody
4 during the period of time when it was incorporated in Delaware,
5 but later that company decides they want to move and became a
6 Texas corporation, or a Kansas corporation, that doesn't allow
7 the company to avoid being held liable in Delaware of activity
8 that occurred during the period of time that it was here.

9 THE COURT: Well, let's assume the widgets were sold
10 in Texas, but somewhere else, so you would need to create
11 jurisdiction in Delaware by the actual event. That really does
12 fix -- that's a defined sort of transaction taking place, and it
13 really does -- well, I mean it doesn't in a way fix rights to
14 liabilities in a way that, you know, or uncertain of our status
15 relative to GeoTag is a lot more nebulous?

16 MR. KRAVITZ: I'll grant you, your Honor, it's more
17 nebulous than a situation with an exploding widget, where there
18 is -- where there is a moment in time where that happens, right?
19 And a Declaratory Judgment, particularly in the context of a
20 threat of infringement, is more nebulous. It's harder to
21 pinpoint than to tell you exactly when you have that perception,
22 but it is a viable cause of action, and it did cause Oracle
23 harm, and that harm did take place.

24 Oracle -- Oracle -- I don't think there is any
25 dispute -- I don't believe there's any dispute that if GeoTag

1 Delaware were still incorporated, if it still existed as a
2 Delaware corporation, that we wouldn't be having this
3 conversation.

4 THE COURT: We might be having a different
5 conversation, but, clearly, a Delaware corporation in existence
6 today.

7 There's personal jurisdiction here?

8 MR. KRAVITZ: Correct.

9 And if -- so what we're arguing, your Honor, on the
10 reliances on these cases, is that permanent jurisdiction existed
11 for this entity, GeoTag Delaware, for a period of 15 months of
12 time, during which this litigation machine was turning out those
13 litigation widgets, your Honor. Those lawsuits.

14 And during that 15 month period of time, Oracle's
15 customers were sued. They were ensnared in this four to 500
16 litigation machine. And it's during that period of time that
17 the Declaratory Judgment Act, or the Declaratory Judgment cause
18 of action manifested itself.

19 And, so, so we're asking the Court to simply allow us
20 to pursue our remedy against the Delaware entity or against the
21 Texas entity by virtue of the Delaware entities actions, which,
22 again, we believe is exactly consistent with what Duris says we
23 can do, and what Goffe says we can do, which is that they can't
24 avoid the accountability for that period of time -- we're not
25 talking about what happened yesterday, or what happened after

1 they incorporated in Texas -- we're talking about that period of
2 time when they were incorporated. When they were enjoying the
3 benefits of a Delaware corporation, the favorable tax structure.

4 All the reasons why corporations love to be formed
5 here. All the reasons why your Honor's docket has been so
6 clogged, and other courts in this state are so clogged. This is
7 a very attractive state for corporations to be formed in.
8 That's not a surprise to anyone.

9 THE COURT: Yes. Well, that's not a surprise.

10 You said besides Goffe, you said something about a
11 Sixth Circuit case.

12 MR. KRAVITZ: That's the Duris case, your Honor, versus
13 Erado Shipping. That's a 1982 decision from the Sixth Circuit,
14 and that some very interesting language in it, your Honor, which
15 we quoted in the brief.

16 THE COURT: Wait a second.

17 Okay.

18 MR. KRAVITZ: D-U-R-I-S.

19 THE COURT: Yes, yes. No, no, no, the table of
20 contents that it actually appears on.

21 MR. KRAVITZ: And in the Duris case, the Court wrote
22 that any other ruling; namely, not allowing this to be
23 adjudicated in the original jurisdiction, would allow
24 corporations to immunize themselves by formalistically changing
25 their titles.

1 THE COURT: Well, but you see for most of them, it
2 wouldn't. I mean for the widget that's disclosed in Texas -- I
3 mean I think it's clear the right of liability -- well, in any
4 event, keep going.

5 MR. KRAVITZ: Your Honor, at the bottom what we're
6 talking about here is, we have a Delaware corporation at the
7 time, GeoTag Delaware, suing another Delaware corporation,
8 Oracle's customers, many of whom are Delaware corporations
9 themselves. And really --

10 THE COURT: But for the fact that Oracle is a Delaware
11 corporation, or that Oracle customers are a Delaware
12 corporation, that seems pretty irrelevant to anything.

13 MR. KRAVITZ: Well, I don't -- well, it -- I don't
14 think it's irrelevant, your Honor. It's not. It doesn't go to
15 the heart of the personal jurisdiction analysis about whether
16 this Court has personal jurisdiction over GeoTag here.

17 That's what we're talking about here. We're talking
18 about a Delaware company suing another Delaware company's
19 customers.

20 And GeoTag is taking the position that this Delaware
21 Federal Court doesn't have the authority to --

22 THE COURT: If you change it to GeoTag never being a
23 Delaware corporation, if they had a Maryland corporation, and
24 had sued all their Delaware -- all of your -- you know, sued
25 Oracle eventually, and sued Oracle's customers in 2009, or 2010,

1 or whenever they were doing it, sued them in Texas, we wouldn't
2 be here.

3 MR. KRAVITZ: I'm not sure we'd be here, your Honor. I
4 think that's probably right.

5 THE COURT: Come on. We wouldn't be here.

6 There couldn't possibly be jurisdiction over this case
7 but for the fact that GeoTag, you know, when it was doing some
8 of the Texas activity, a large part of it was a Delaware
9 corporation.

10 MR. KRAVITZ: Based on what we know, I would agree,
11 your Honor. Frankly, we didn't have a lot of visibility as to
12 what GeoTag was up to in Delaware. We have very little
13 information about that.

14 THE COURT: But you have -- I did see somewhere in here
15 a Request for Discovery, which struck me as being not
16 withstanding the Third Circuit's general willingness to allow
17 some jurisdictional discovery to be, in my opinion, pretty far
18 fetched, when you want to find something that is beyond the
19 facts that you already know, which is that they were
20 incorporated in Delaware for 15 months, or whatever period of
21 time. Clearly, everything else is happening in Texas.

22 MR. KRAVITZ: Well, your Honor, again, I don't want --
23 I don't want to belabor that point, but I don't know anything
24 about what GeoTag may have or may not have done in Delaware,
25 other than the fact that I know they were incorporated here for

1 15 months.

2 I don't know whether they were raising money here. I
3 don't know whether they were engaged in any sort of business
4 here during that 15 month period. I don't have that
5 information.

6 THE COURT: Right. Okay.

7 MR. KRAVITZ: But based on what we know, your Honor,
8 your hypothetical about Maryland, I can't disagree with that.

9 So, clearly, the nub of this argument is, is GeoTag
10 Delaware's incorporation here for 15 months -- again, while they
11 formed a company for the sole purpose of engaging in this
12 litigation machine?

13 MR. DORSNEY: Your Honor, I have to object to this
14 constant referral of GeoTag as a litigation machine.

15 THE COURT: Well, Dorsney, it's an argument.

16 Mr. DORSNEY: It's becoming a little over the top for
17 my taste, your Honor. I'm sorry.

18 THE COURT: I don't think it's unfair. I mean it's not
19 illegal, but I don't think it's unfair.

20 But, in any event, go ahead.

21 MR. KRAVITZ: They formed the company for that purpose,
22 your Honor, for the purpose of enforcing the '474 patent. It's
23 only assets. Again, enjoined the benefits of Delaware
24 corporations, whatever they happened to be.

25 And the legislature of this state has decided -- has

1 enacted laws that say, The surviving company, in the context of
2 a merger, is responsible for those continuing obligations. You
3 can't simply pack up your tent, go find another state,
4 incorporate in that other state, and then walk away and wash
5 your hands of any obligations that you had during the period of
6 time when you did.

7 THE COURT: Well, that kind of gets to whether the kind
8 of things that come up in a Declaratory Judgment are
9 obligations.

10 MR. KRAVITZ: It's an obligation to answer for
11 allegations made against you in a Court of Law. Certainly
12 that's an obligation that Delaware companies are -- are hindered
13 with. That is a consequence of being a Delaware corporation
14 under 122, Section 2.

15 That they -- Delaware corporations incorporated here in
16 Delaware must be subject to lawsuits here. That's a statement
17 of fact. And, in fact, that's why GeoTag left. They didn't
18 want to be subject to that.

19 THE COURT: Let me ask you this question: If I were
20 inclined to grant a Motion to Dismiss, does the case get
21 transferred to Texas or do you want to just be dismissed?

22 MR. KRAVITZ: I would probably have to say, I would
23 want it just to be dismissed, your Honor.

24 THE COURT: All right.

25 I think I've got your point of view.

1 Is there anything else that you want to say?

2 MR. KRAVITZ: 30 seconds to confer with co-counsel,
3 your Honor?

4 THE COURT: Surely, yes.

5 MR. KRAVITZ: Your Honor, so just two minutes, maybe
6 even 90 seconds.

7 I think one of the fundamental questions that the Court
8 needs to consider in this analysis is, is what we're attempting
9 to do here, and to exercise personal jurisdiction, or what we're
10 asking the Court to do is to exercise personal jurisdiction over
11 GeoTag.

12 Does that offend the notion of fair play? Is it a
13 violation of due process?

14 I don't think that that argument resonates here, your
15 Honor. Under the circumstances, they were incorporated. They
16 even enjoyed the benefits of being a Delaware corporations.

17 And just as Microsoft and Google have done, your Honor,
18 what we are seeking to do here in Delaware is to have a clear
19 path to adjudicate the claims that have been made against
20 Oracle, okay?

21 What's going on in the Eastern District of Texas, your
22 Honor, is remarkable in terms of the number of defendants and
23 the number of lawsuits. But, by the same token, it is a morass
24 in terms of trying to get clarity. And for a company like
25 Oracle, which is responsible, ultimately responsible for -- Mr.

1 Bennett had mentioned, I think, a dozen indemnified parties. We
2 actually have over 40 now. There are over 40 companies that are
3 looking to Oracle to defend them in the Texas litigation. And
4 it's not one case, your Honor, it's multiple cases, your Honor.

5 THE COURT: As a practical matter, if there were
6 jurisdiction here, aren't all your clients all going to be
7 resolved before anything happens here with you?

8 MR. KRAVITZ: Because of the Texas case, your Honor?

9 THE COURT: Yes.

10 MR. KRAVITZ: No, I actually -- I think just the
11 opposite is true.

12 What is going to happen in Texas is, let's say
13 hypothetically an Oracle customer is among the lucky few that
14 get to go in the first trial against GeoTag. That's one custody
15 with presumably one Oracle product. And there will be, you
16 know, a trial that will have multiple defendants. Multiple
17 different products. Perhaps there will be some Microsoft
18 products. Perhaps they'll be whatever. Store locators and job
19 locaters. And it is going to be extremely confusing. It's
20 going to be extremely time limited. And Oracle is going to have
21 just one slice. One small opportunity to defend its one
22 product, when, in fact, if I'm not mistaken, your Honor, there
23 are at least four Oracle products that have been accused in this
24 litigation in the Texas actions.

25 So what's going to happen in Texas will be certainly

1 interesting to Oracle. Will of an impact on Oracle. But it's
2 not going to give any sort of global resolution for Oracle.

3 Only a case that has -- where Oracle is the sole
4 defendant, so that all of Oracle's products can be at issue, and
5 Oracle can defend all its products in terms of non-infringement,
6 your Honor.

7 Only, under those circumstances, is there any sort of
8 efficiency for a company like Oracle. Otherwise, it's a piece
9 meal trial, after trial, after trial down there for different
10 products.

11 THE COURT: Well, but I'm just thinking, you know, it
12 has taken Microsoft and Google two years to get to where they
13 are today in Delaware.

14 MR. KRAVITZ: We tried hard to join them.

15 THE COURT: Yes, yes, that's part of the reason why you
16 didn't.

17 So it may be the case that Judge Gilstrap will try so
18 many cases on December 2nd. I wouldn't be surprised if he
19 schedules another trial for December 9th. So, you know, he'll
20 get through them.

21 MR. KRAVITZ: I have no doubt he will, your Honor, but
22 it will be in a manner that is significantly less efficient for
23 a company like Oracle, which is going to have to deal with this
24 on a piece meal basis.

25 THE COURT: Well, that is kind of my point is, you

1 know, the patent cases that I'm getting today are scheduled for
2 trial in, you know, 2015. So I'm quite confident that Judge
3 Gilstrap is going to exhaust all 400 of those defendants before
4 we get to 2015. Maybe Oracle would have its trial, but all of
5 its clients would have their trials, or have their cases
6 resolved long before anything happens here?

7 MR. KRAVITZ: That's a fair point, your Honor.

8 If this Court were inclined to deny the motion to find
9 that there's personal jurisdiction here, certainly we would
10 approach GeoTag with a proposal under the customer suit
11 exception and say, Look, it doesn't make --

12 THE COURT: They haven't been widely receptive to those
13 sort of proposals.

14 MR. KRAVITZ: They have not been wildly receptive to
15 that yet, your Honor. They're reasonable people. And I'm sure
16 we could have a discussion about the efficiencies of doing
17 something like that, because it doesn't make sense to waste --
18 well, to spend or invest two Federal Courts considerable time
19 working on parallel tracks.

20 THE COURT: All right. Okay.

21 Let me hear a little bit more from Mr. Bennett. Maybe
22 I will take a recess for a minute.

23 MR. KRAVITZ: Thank you.

24 THE COURT: So, Mr. Bennett, Mr. Kravitz says that you
25 didn't respond to Goffe and Duris in your reply brief. So this

1 is your opportunity.

2 What do you think about them?

3 MR. BENNETT: Well, I think Goffe and Duris aren't
4 relevant, and I believe we did respond to them, because this
5 refers to specific -- they refer to having specific debts,
6 liabilities, and duties.

7 Now, in a Declaratory Judgment action, the filing of a
8 lawsuit by GeoTag does not automatically create any type of
9 cause of action, a Declaratory Judgment. There has to be some
10 sort of uncertainty or feel a threat by Oracle that would lead
11 to this Declaratory Judgment, because it's trying to resolve
12 uncertainty.

13 THE COURT: Well, you just kind of passed over you
14 think they're irrelevant.

15 Why are they irrelevant?

16 MR. BENNETT: Because this lawsuit isn't related to
17 debts, liabilities, or duties of GeoTag Delaware.

18 The actions are that these lawsuits in Texas, Oracle
19 wasn't even aware of a threat. The only threat that they were
20 actually were aware of was from GeoTag Texas, because --

21 THE COURT: And the only threat they have to actually
22 be concerned about today is from GeoTag Texas because GeoTag
23 Delaware is gone, right?

24 MR. BENNETT: Correct.

25 And GeoTag's business is actually in Texas. That's

1 where they have offices. That's where their CEO is.

2 THE COURT: Yes, yes, I heard that before.

3 MR. BENNETT: Well, the fact that the CEO is one of the
4 inventors --

5 THE COURT: No, no, I'm just saying I heard that
6 before. I know where their offices are.

7 MR. BENNETT: In terms of a threat, the threat all
8 occurred from GeoTag Texas.

9 At the time the lawsuit was filed, the threat was only
10 from GeoTag Texas, so in terms of personal jurisdiction,
11 determined at the time the lawsuit was filed, this threat has to
12 do with GeoTag Texas, not GeoTag Delaware.

13 So I think -- I think it's just really a very simple
14 issue, is that this is a Declaratory Judgment action related to
15 a feeling of a threat by Oracle.

16 The only evidence they have in their brief of a threat
17 was from GeoTag Texas, because it was all after GeoTag Delaware
18 ceased to exist. So, and again, it's -- it's a feeling of
19 uncertainly. There's no actual, you know, hitting somebody with
20 a hammer or some object exploding that GeoTag did. This is try
21 and alleviate some of this uncertainty by Oracle to a potential
22 lawsuit.

23 In fact, in terms of determining this issue in one
24 court, GeoTag has filed a lawsuit against Oracle in Texas. That
25 was, in part, because GeoTag was also serving subpoenas on

1 Oracle in Texas related to the Texas defendants.

2 So everything is going on in Texas. We'll be in trial
3 in Texas. Oracle's attorneys --

4 THE COURT: Yes, I'm pretty sure that it -- right.
5 I'm sorry. Continue your thought.

6 MR. BENNETT: Oracle's attorneys are literally running
7 the litigation for their defendants in Texas. They asked for
8 mediation in Texas.

9 We think that this case in Delaware should be
10 dismissed, because we are already proceeding in Texas.

11 THE COURT: All right.

12 Let me just take a recess for a couple of minutes here,
13 okay?

14 Don't go anywhere.

15 (At this time the Court left the bench.)

16 (Pause.)

17 THE COURT: All right. Please be seated.

18 You know, I think this is honestly kind of an
19 interesting question here on the Motion to Dismiss, and I did go
20 back and re-review the Goffe and Duris cases that Mr. Kravitz
21 pointed me to.

22 Honestly, I don't think they really helped very much,
23 because they sort of stand for the proposition, which doesn't
24 seem to be really too much in dispute, but there are certain
25 kind of rights and liabilities that attach to a corporation at a

1 point in time. And that then that corporation merges into some
2 other corporation, and the constituent corporation, the
3 surviving corporation can't run away from whatever jurisdiction
4 the constituent corporation gave to it.

5 But the Declaratory Judgment to me is a different sort
6 of case. And, you know, the key allegation in a Declaratory
7 Judgment suit, which is Paragraph 9 of the Complaint here, which
8 was filed on, I guess, May 18th of 2012, there is an actual
9 controversy between the plaintiffs and GeoTag regarding whether
10 use of plaintiff's job search database products infringes the
11 '474 patent, and whether the patent is valid.

12 You know, this strikes me as an actual controversy,
13 talking about the present day. And, for example, you know, some
14 time between the nine months when GeoTag Delaware became a
15 constituent corporation of GeoTag Texas, would have been a
16 covenant not sue, or something like that, there would be no
17 controversy.

18 So it really depends to me, it seems what's going on at
19 the time the suit was filed, and I think there's very little
20 dispute at the time the suit was filed, there was no dispute
21 that GeoTag was a Texas corporation, and that at that time there
22 was nothing that would give jurisdiction over GeoTag Texas in
23 Delaware.

24 So I'm going to dismiss the Complaint and I will issue
25 an order promptly.

1 It is an interesting question, and I'm certainly not
2 saying that I'm necessarily right, but it does strike me that
3 GeoTag has the better of the argument here.

4 All right. Thank you very much.

5 MR. KRAVITZ: Your Honor, may I ask, respectfully, a
6 question.

7 Is this an issue that you might certify for appeal?

8 THE COURT: I'm dismissing, so you can appeal.

9 I don't need to certify it, right.

10 MR. KRAVITZ: Yes, I guess that's right, your Honor. I
11 think that's right.

12 (Court adjourned at 4:00 o'clock p.m.)

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